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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,489	09/26/2005	Satoshi Fukui	1466.1104	5404
21171	7590	05/08/2008		
STAAS & HALSEY LLP			EXAMINER	
SUITE 700			STRIEB, MICHAEL A	
1201 NEW YORK AVENUE, N.W.				
WASHINGTON, DC 20005			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,489	<b>Applicant(s)</b> FUKUI ET AL.
	<b>Examiner</b> MICHAEL A. STRIEB	<b>Art Unit</b> 2862

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 February 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2 and 7-9 is/are rejected.

7) Claim(s) 3-6 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 06 February 2008 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendment filed on February 6, 2008 has been entered. Claims 1-9 are still pending in this application, with claims 1-2 and 7-9 being independent.

Applicant's replacement drawings filed on February 6, 2008 have been entered. In light of the replacement drawings, the objection to the drawings entered in the previous Office Action has been withdrawn.

***Claim Objections***

2. Claim 6 is objected to because of the following informalities: a portion of the claim reads "...wherein the image taking control portion controls so as to take an image when the distance is not measured by the measuring portion that obtains the background image.". The syntax makes it unclear whether it is the image taking control portion that obtains the background image, or the measuring portion that obtains the background image. The Examiner assumes it is the former, and suggests that portion of the claim be changed to read as follows: "...wherein the image taking control portion that obtains the background image controls so as to take an image when the distance is not measured by the measuring portion.". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Tatsuhiko et al (JP 2001-230970) in view of Sato (US 5,204,709).

Regarding **claim 1**, Tatsuhiko et al disclose an image taking device for taking an image of an object by focusing reflected light from the object on a light receiving portion, comprising a measuring portion that measures a distance between the object and the image taking device; and an exposure control portion that controls exposure time of the light receiving portion upon taking an image in accordance with the measurement result of the measuring portion (paragraphs 8, 44, and 51).

Tatsuhiko et al do not disclose an image taking control portion that controls so as to take an image of the object if it is determined by the measuring portion that the distance between the object and the image taking device is within a predetermined range.

Sato discloses an image taking control portion that controls so as to take an image of the object if it is determined by the measuring portion that the distance between the object and the image taking device is within a predetermined range (column 5, lines 54-68; column 6, lines 1-11; Figure 4).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to combine Sato with Tatsuhiko et al. The motivation would have been to allow for more accurate exposure within the functional parameters of the

camera. Therefore, it would have been obvious to combine Sato with Tatsuhiko et al to obtain the invention as disclosed in claim 1.

Regarding **claim 8**, Tatsuhiko et al in combination with Sato disclose the claimed invention in the same manner as applied to claim 1 above.

Regarding **claim 9**, Tatsuhiko et al in combination with Sato disclose the claimed invention in the same manner as applied to claim 1 above. Note that in paragraph 18, Tatsuhiko et al make reference to "a digital camera", a "processing module", and an "operation module". The need for a computer program is inherent in the operation of these elements.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okino (US 4,768,876) in view of Sato.

Regarding **claim 2**, Okino discloses an image taking device for taking an image of an object by focusing reflected light from the object on a light receiving portion (column 1, lines 57-58) that converts the light into an electric signal (column 2, lines 60-62; column 3, lines 8-10), comprising a measuring portion that measures a distance between the object and the image taking device (column 6, lines 23-26; 36-49) and a gain control portion that controls an output gain of the electric signal in accordance with the measurement result of the measuring portion (column 2, lines 64-65; column 3, lines 36-40; column 6, lines 57-60; Figure 1, element 9).

Okino does not disclose an image taking control portion that controls so as to take an image of the object if it is determined by the measuring portion that the distance between the object and the image taking device is within a predetermined range.

Sato discloses an image taking control portion that controls so as to take an image of the object if it is determined by the measuring portion that the distance between the object and the image taking device is within a predetermined range (column 5, lines 54-68; column 6, lines 1-11; Figure 4).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to combine Sato with Okino. The motivation would have been to allow for more accurate exposure within the functional parameters of the camera. Therefore, it would have been obvious to combine Sato with Okino to obtain the invention as disclosed in claim 2.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rice (US 4,699,149) in view of Tatsuhiko et al and in further view of Sato.

Regarding **claim 7**, Rice discloses an image taking device for taking an image of a blood vessel pattern of a body, comprising a lighting portion that radiates infrared rays to the body and a light receiving portion that receives reflected light of the infrared rays from the body (column 2, lines 7-18).

Rice does not disclose a measuring portion for measuring a distance between the body and the image taking device.

Further, Rice does not disclose an exposure control portion for controlling so that exposure time of the light receiving portion upon taking an image becomes longer as the distance measured by the measuring portion is longer.

Tatsuhiko et al disclose a measuring portion for measuring a distance between the body and the image taking device (paragraph 8, 44) Further, Tatsuhiko et al disclose an exposure control portion for controlling exposure time (paragraph 8, 51).

At the time of the invention, it would have been obvious to combine Tatsuhiko et al with Rice. The motivation for doing so would have been to allow the means to gather data necessary for the correct exposure of light, and the control of the resultant exposure, so as to avoid over-exposing or under-exposing the subject.

Rice in combination with Tatsuhiko et al do not disclose an image taking control portion that controls so as to take an image of the blood vessel pattern of a body if it is determined by the measuring portion that the distance between the body and the image taking device is within a predetermined range.

Sato discloses an image taking control portion that controls so as to take an image of the object if it is determined by the measuring portion that the distance between the object and the image taking device is within a predetermined range (column 5, lines 54-68; column 6, lines 1-11; Figure 4).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to combine Sato with Rice and Tatsuhiko et al. The motivation would have been to allow for more accurate exposure within the functional parameters

of the camera. Therefore, it would have been obvious to combine Sato with Rice and Tatsuhiko et al to obtain the invention as disclosed in claim 7.

***Allowable Subject Matter***

7. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding **claim 3-4**, Tatsuhiko et al in combination with Sato and Okino in combination with Sato disclose all of the limitations as applied to claims 1 and 2 above, respectively.

Neither Tatsuhiko et al in combination with Sato or Okino in combination with Sato disclose a posture determining portion that determined whether or not the subject surface of the object is perpendicular to an axis along a shooting direction of the image taking device.

Musgrave et al (US 6,377,699) discloses a posture determining portion that provides guidance as to the optimal position of the subject in relation to the image taking device (column 7, lines 12-35). However, the prior art does not disclose wherein the measuring portion measures distances between the image taking device and at least two points on the subject surface of the object as the distance, the posture determining device determining whether or not the subject surface of the object is perpendicular to the axis along the shooting direction of the image taking device in accordance with the measurement results of the measuring portion for the points.

Further, the prior art does not disclose wherein the image taking control portion further controls so as to take an image of the object if it is determined by the posture determining portion that the subject surface of the object is perpendicular to an axis along the shooting direction of the image taking device.

Regarding **claim 5**, Tatsuhiko et al in combination with Sato and Okino in combination with Sato disclose all of the limitations as applied to claims 1 and 2 above, respectively.

However, neither Tatsuhiko et al in combination with Sato or Okino in combination with Sato disclose a still determining portion that determines, based on the measurement result, whether or not the object is still. Further, the prior art does not disclose wherein the image taking control portion controls so as to take an image of the object if it is determined to be still.

8. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, as well as overcoming the objection as detailed above.

Regarding **claim 6**, Tatsuhiko et al in combination with Sato and Okino in combination with Sato disclose all of the limitations as applied to claims 1 and 2 above, respectively.

However, neither Tatsuhiko et al in combination with Sato or Okino in combination with Sato disclose an extracting portion that extracts an image that includes only the object by comparing the background image with an image obtained by

taking an image of the object, wherein the image taking control portion controls so as to take an image when the distance is not measured by the measuring portion that obtains the background image.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-2 and 7-9 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's arguments, see Remarks pages 10-11, filed February 6, 2008, with respect to claim 3 have been fully considered and are persuasive. The rejection of claim 3 has been withdrawn.

11. Applicant's arguments, see Remarks page 12, filed February 6, 2008, with respect to claim 4 have been fully considered and are persuasive. The rejection of claim 4 has been withdrawn.

12. Applicant's arguments, see Remarks pages 12-13, filed February 6, 2008, with respect to claim 5 have been fully considered and are persuasive. The rejection of claim 5 has been withdrawn.

13. Applicant's arguments, see Remarks pages 13-14, filed February 6, 2008, with respect to claim 6 have been fully considered and are persuasive. The rejection of claim 6 has been withdrawn.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any response to this office action should be faxed to (571) 273-8300 or mailed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Hand - delivered responses should be brought to:

Customer Service Window  
Randolph Building  
401 Dulany Street

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL A. STRIEB whose telephone number is

(571)270-3528. The examiner can normally be reached on Monday-Friday 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Assouad can be reached on (571) 272-2210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William B. Perkey/  
for Patrick Assouad, SPE of Art Unit 2862

MAS